

2014 DEC -2 PM 4: 22

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

MUR: 6855
DATE COMPLAINT FILED: July 18, 2014
DATE OF NOTIFICATION: July 24, 2014
LAST RESPONSE RECEIVED: September 8, 2014
DATE ACTIVATED: October 27, 2014

ELECTION CYCLE: 2014
EXPIRATION OF SOL:
May 1, 2015 (earliest)
December 31, 2015 (latest)

COMPLAINANT: Stephen L. Grimm

RESPONDENTS: Representative Justin Amash

Justin Amash for Congress and Stacey Chalfoun in
her official capacity as treasurer

Michigan Industrial Tools, Inc.

**RELEVANT STATUTES AND
REGULATIONS:** 52 U.S.C. § 30116(f)¹
52 U.S.C. § 30118(a)
11 C.F.R. § 113.1(g)
11 C.F.R. § 114.2(c)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter involves an allegation that Rep. Justin Amash, Justin Amash for Congress
and Stacey Chalfoun in her official capacity as treasurer (the "Committee"), and Michigan
Industrial Tools, Inc. ("MIT") violated the Federal Election Campaign Act, as amended (the

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 "Act"). Specifically, the Complaint alleges that in 2010 MIT paid Amash \$180,000 in excess of
2 actual hours worked, or in consideration of work not performed, and in doing so made a
3 prohibited corporate contribution.

4 As discussed below, the available information indicates that the compensation that MIT
5 paid to Amash was not a contribution. Accordingly, we recommend that the Commission find
6 no reason to believe that the Respondents violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
7 § 441b(a)) and close the file.

8 II. FACTS

9 Justin Amash is the Representative from Michigan's 3rd Congressional District. Justin
10 Amash for Congress is Amash's principal campaign committee.² MIT is a hand tool business
11 owned by members of the Amash family.³

12 Amash began working as a consultant for MIT in 2007.⁴ According to his response, his
13 compensation was based on "contributions to the company and has not been tied directly to
14 hours worked."⁵ Amash was compensated \$140,000 in 2007, \$135,000 in 2008, and \$60,000 in
15 2009. According to Amash the amounts of compensation were based on "a number of factors
16 including: talent and ability, hours worked, and specific contributions."⁶ Amash continued
17 receiving compensation from MIT after he became a candidate for Congress in 2010. Amash
18 asserts that his continued employment with MIT constituted *bona fide* employment, and his

2. See Committee Statement of Organization, 1-2 (Feb. 19, 2010).

3. Amash Resp. at 3 (Sep. 5, 2014). Amash's father started MIT, and Amash's two brothers are employees.
Id.

4. *Id.* at 6.

5. *Id.*

6. *Id.*

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1 compensation was determined by the same factors as in prior years.⁷ His base salary during
2 2010 was \$60,000.⁸ Amash, along with his brothers, also received a "mid-year performance
3 bonus" of \$40,000 due to "unexpectedly high revenue."⁹ After winning election to Congress,
4 Amash decided to leave the company. MIT paid him a \$100,000 year-end bonus on December
5 27, 2010 "to recognize his contributions to the company and, especially, his leading role the prior
6 year in creating" MIT's top-selling line of hand tools for 2010.¹⁰

7 The Complaint alleges that \$180,000 of the compensation Amash received in 2010 "was
8 in excess of any reasonable amount he could have earned for his work."¹¹ Therefore, the
9 Complaint concludes, that Amash may have received "potentially improper corporate
10 contributions."¹²

11 Amash and the Committee filed a response arguing that the Complaint is deficient on its
12 face because it alleges only that a violation has "potentially" occurred, and not that a violation
13 "has occurred."¹³ The Respondents also assert that the Complaint is insufficient because it lacks

⁷ *Id.*

⁸ *Id.* at 4. Amash received \$20,000 of his base salary during the first four months of 2010. Compl. at 1 (July 18, 2014).

⁹ Amash Resp. at 4.

¹⁰ *Id.*

¹¹ Compl. at 2.

¹² Although the Complaint states that Amash "should have received" \$40,000 in base salary after May 1, 2010, the Complaint nevertheless includes that figure in arriving at a total amount in violation of \$180,000.

¹³ Amash Resp. at 5. The Act states that "any person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission." 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). The Act does not require a complainant to renounce all possibility that a violation did not occur; rather, it is sufficient to file a complaint based on belief. The use of the word "potentially" here does not change the nature of the complaint in any meaningful way. Thus, Respondent's argument has no merit and we do not address it further in this Report.

1 specific facts and forces them "into responding to pure speculation."¹⁴ Amash further argues that
2 in any event, the \$200,000 Amash received during 2010 is "in line with his compensation in past
3 years and consistent with the company's policies."¹⁵ Amash and the Committee deny that any
4 part of Amash's compensation was a contribution, because the compensation resulted from
5 "bona fide employment that was genuinely independent" of Amash's candidacy; that Amash's
6 duties as a consultant to MIT did not change after he became a candidate; that any fees paid to
7 Amash during 2010 were in consideration for services provided to MIT; and that Amash was
8 compensated in accordance with the established compensation plan of MIT in 2010.¹⁶

9 MIT filed a response stating that it intended to stand on the response filed by Amash and
10 the Committee.¹⁷

11 **III. ANALYSIS**

12 **A. MIT Did Not Make a Prohibited Corporate Contribution**

13 Corporations are prohibited from making contributions to federal candidates or their
14 authorized committees, and candidates and authorized committees are prohibited from
15 knowingly receiving or accepting such contributions.¹⁸ Under section 30118 (formerly section
16 441b) of the Act, the term "contribution" includes "any gift, loan, advance, or deposit of money
17 or anything of value made by any person for the purpose of influencing any election for Federal
18 office," and "any direct or indirect payment, distribution, loan, advance, deposit, or gift of

¹⁴ Amash Resp. at 5.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 6-7.

¹⁷ MIT Resp. at 1 (Sep. 8, 2014).

¹⁸ 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(a) and (b)(1).

1 money, or any services, or anything of value . . . to any candidate, campaign committee, or
2 political party or organization," in connection with any election to any Federal office.¹⁹

3 Payments of "compensation" to a candidate "shall be considered contributions" from the
4 payor to the candidate unless: (A) The compensation results from *bona fide* employment that is
5 genuinely independent of the candidacy; (B) The compensation is exclusively in consideration of
6 services provided by the employee as part of this employment; and (C) The compensation does
7 not exceed the amount of compensation which would be paid to any other similarly qualified
8 person for the same work over the same period of time.²⁰

9 Based on the available information, the compensation paid to Amash by MIT in 2010
10 does not appear to have been a contribution because it satisfies the requirements of 11 C.F.R.
11 § 113.1(g)(6)(iii).

12 With respect to the first requirement, Amash had provided consulting services to MIT —
13 his family's hand tool business — since 2007. According to the Respondents, Amash and his
14 two brothers were compensated by their father for "their work, assistance with management, and
15 input on strategic direction."²¹ There is no information suggesting that his continued
16 employment by MIT was dependent upon his candidacy, or that the services he provided
17 changed after Amash became a candidate, and the Complaint provides no countervailing

¹⁹ 52 U.S.C. § 30118(b)(2) (formerly 2 U.S.C. § 441b(b)(2)); 11 C.F.R. § 114.2(b)(1).

²⁰ 11 C.F.R. § 113.1(g)(6)(iii); *see, e.g.*, Advisory Op. 2013-03 (Bilbray-Kohn) (applying section 113.1(g)(6)(iii) to determine whether compensation paid to candidate would be contribution); Advisory Op. 2011-27 (New Mexico Voices for Children) (same); Advisory Op. 2006-13 (Spivack) (same); Advisory Op. 2004-17 (Klein) (same); Advisory Op. 2004-08 (American Sugar Cane League) (same).

²¹ Amash Resp. at 3.

1 evidence. The available information indicates that Amash's compensation resulted from *bona*
2 *fide* employment that was genuinely independent of his candidacy.²²

3 Regarding the second requirement — that the compensation is exclusively in
4 consideration of services provided by the employee as part of his employment — we have no
5 information suggesting that Amash was compensated for activities he undertook as a candidate,
6 or that MIT hired him with the intention of advancing his political career.²³ Although the
7 Respondents do not provide a detailed breakdown of Amash's duties for MIT throughout 2010,
8 neither does the Complaint supply evidence that Amash was being compensated by MIT for
9 something other than the services he provided as part of his employment.

10 Regarding the third requirement — that the compensation does not exceed the amount of
11 compensation which would be paid to any other similarly qualified person for the same work
12 over the same period of time — we are in possession of no information indicating that Amash's
13 compensation was excessive. Amash's base salary during his candidacy appears to be roughly in
14 line with his compensation for prior years, and, with respect to his \$40,000 mid-year bonus,
15 equal to that received by his brothers, who were not federal candidates. Even though it appears
16 that Amash received a \$100,000 year-end bonus, the Respondents state that it was tied
17 specifically to Amash's earlier work on a line of hand tools that would become the company's
18 most profitable, purportedly generating \$10 million in new sales for MIT.²⁴ Furthermore, the

²² See Advisory Op. 2013-03 (Bilbray-Kohn) at 5 (candidate's consulting arrangement would constitute *bona fide* employment that was "genuinely independent" of her candidacy because the corporation's reasons for retaining the candidate were not dependent upon her candidacy, nor would her duties or compensation change upon becoming a candidate); MUR 5260 (Tester for Senate) (*bona fide* employment where candidate had recruited new business to a law firm and provided documented lobbying and legal services, and had taught classes at university part-time).

²³ Advisory Op. 2013-03 (Bilbray-Kohn) at 5; Gen. Counsel's Rpt. at 18-19, 21, MUR 5260 (Tester for Senate).

²⁴ Amash Resp. at 4.

1 Respondents state that compensation was determined (in prior years and in 2010) on the basis of
2 several factors, and not only the number of hours worked.²⁵ The Complaint supplies no
3 information to refute this claim.

4 Based on the available information, MIT's compensation to Amash does not appear to be
5 a contribution under 11 C.F.R. § 113.1(g)(6)(iii).²⁶ Accordingly, we recommend that the
6 Commission find no reason to believe that MIT, Amash, and the Committee violated 52 U.S.C.
7 § 30118(a) (formerly 2 U.S.C. § 441b(a)) by making or receiving a prohibited corporate
8 contribution, and close the file.

²⁵ *Id.* at 3, 7.

²⁶ MUR 6023 (John McCain 2008 Inc.) (severance payments to McCain campaign employee not a contribution where consistent with firm policy and taking into account employee's status with firm); MUR 5260 (Tester for Senate) (*bona fide* employment where candidate had recruited new business to a law firm and provided documented lobbying and legal services, and had taught classes at university part-time).

IV. RECOMMENDATIONS

1. Find no reason to believe that Justin Amash violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).
2. Find no reason to believe that Justin Amash for Congress and Stacey Chalfoun in her official capacity as treasurer violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).
3. Find no reason to believe Michigan Industrial Tools, Inc. violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.

Daniel A. Petalas
Associate General Counsel for Enforcement

Date

12-2-14

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